

Sumter City-County Board of Appeals

January 13, 2010

BOA-09-28, 520 N. Main St. (City)

I. THE REQUEST

Applicant: Charles Hodge

Status of the Applicant: Property Owner

Request: A variance from the strict application of Article 8, Section J of the Sumter City Zoning Ordinance, parking and landscaping retrofitting requirements.

Location: 520 North Main Street

Present Use/Zoning: Vacant former mercantile/General Commercial, Highway Corridor Protection District (GC/HCPD)

Tax Map Reference: 228-04-02-034

Photo of the building at 520 North Main:



II. BACKGROUND

The applicant, Charles Hodge, is requesting a variance from the landscaping, parking, and curbing requirements for retrofitting parking lots on commercial property in the City of Sumter. He is planning to keep the property in its current condition.

The applicant intends to lease the property. A potential tenant recently submitted a business license to open an arcade. Currently, the subject property has one building on the site (which is attached to a building on the adjacent lot), no landscaping, and +/- 11 paved parking spaces. Parking requirements will vary depending on the business type that leases the property.

The property has had no business activity for some time. According to Business Licensing, there has been no license issued to operate a business at 520 North Main Street since 2002. The applicant must therefore comply with Section 6.g.1 and Section 8.j.3 of the City Zoning Ordinance which states:

- **Article 6, Section G: Retrofitting Parking Lots, Buffers, and Landscaping.**

6.g.1 It shall be the responsibility of owners of property to comply with the provisions of 8.d.11 of this Ordinance.

8.d.11 Retrofitting Under Prevailing Landscaping, Buffering, and Parking Lot Landscaping Standards:

As per Article Six, Section G of this Ordinance, any commercial or industrial activity which remains vacant on a parcel of land for a six (6) month period, and re-opens as the same use or different use (which may be permitted in the zoning district) shall meet all the standards of this Article.

8.b.6 Landscape Design:

- a. Reasonable landscaping should be provided at site entrances, in public areas, in parking lots, adjacent and around the perimeter of buildings. All landscaped areas shall be irrigated and placed on a timer system. The type and amount of landscaping required shall be allowed to vary with the type of development*
- b. The plant or other landscaping material that best serves the intended function shall be selected. Landscaping materials shall be appropriate for the local climate, soil conditions, and general site characteristics.*

8. j. 3.b Design Requirements:

- b. Surfacing, Drainage and Maintenance: Off-street parking facilities shall be properly graded for drainage to prevent damage to abutting property and/or public streets and alleys. Parking lots shall be surfaced with asphalt, concrete, or other surfaces approved by the Sumter City-County Planning Commission. Off street parking lots shall include concrete curbs and gutters, maintained in a clean, orderly and dust-free condition, and not used for the sale, repair or the dismantling or servicing of any vehicles, equipment, materials or supplies. (Note: For places of Worship (SIC 866) that only use their facilities a maximum of two days per week, the required parking spots do not have to be paved, and curb and gutter is not required. Any additional use beyond two days per week requires full compliance with the above paragraph.)*

LANDSCAPING AND RETROFITTING REQUIREMENTS OF THE ORDINANCE

The property must be retrofitted to include the following landscaped areas:

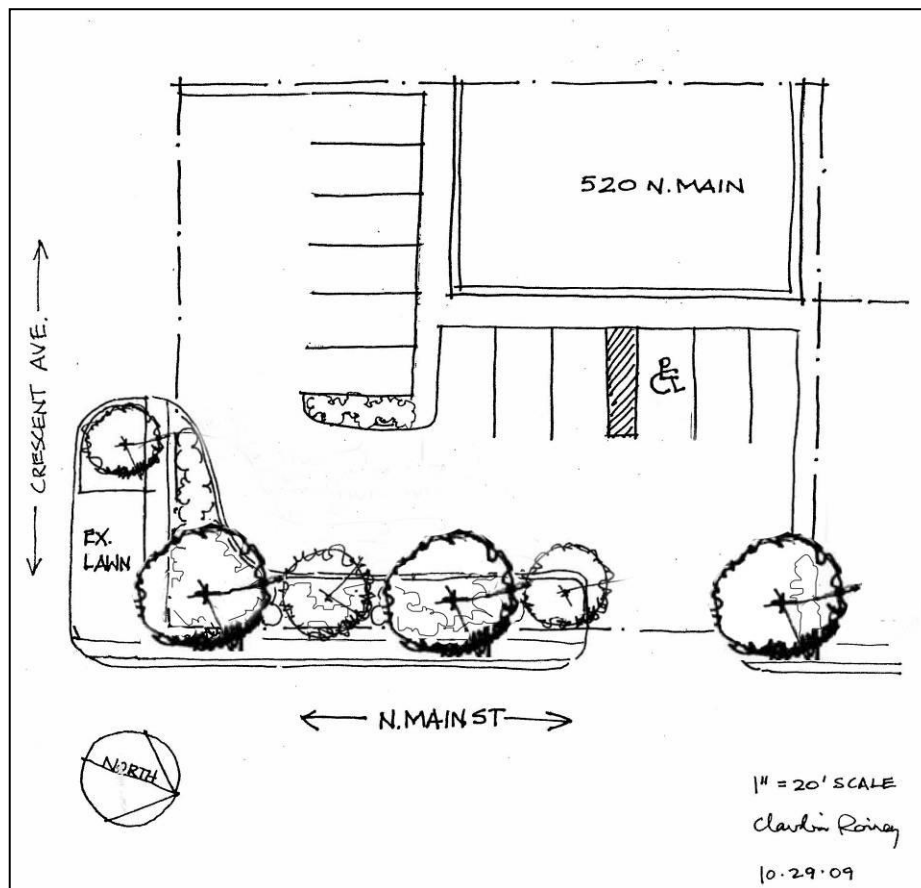
- 10 foot-wide bufferyard located out of the public ROW along both streets
- 5 foot-wide bufferyard along the interior sides of the parking lot
- Parking lot trees
- Curb and gutter
- Service area for garbage collection and utilities shall be screened and/or fenced to the equivalent of a five-foot bufferyard or privacy fence or some combination of the two.
- Plantings shall be watered regularly by an automatic and timed irrigation system or other acceptable methods of periodic watering.
- Plant materials shall be of sufficiently large and planted in such a fashion that a year-round screen at least six (6) feet in height shall be produced within three (3) growing seasons. All plantings shall be installed according to acceptable horticultural standards.
- Deciduous street trees must have straight trunks and be of two-inch (2”) caliper at time of planting. They must be placed at intervals of forty (40) feet or else shall have smaller understory trees planted in between.
- A site landscaping plan must be submitted and approved by staff at the Sumter City-County Planning Department because of the property’s location within the Highway Corridor Protection District (HCPD).

III. THE REQUEST

The applicant is seeking the variance because the updates required by the ordinance are “not cost effective with current economic conditions and would eliminate prime parking spaces where space is already limited”.

The applicant is requesting a variance from the strict application of the ordinance requiring the property to be landscaped, curbed and to have parking needs met according to current Ordinance requirements. This would allow the applicant to use the current parking area with no improvements, and to apply no additional landscaped areas including the five-foot required bufferyards between the proposed business and neighboring properties.

In response to this request and as a gesture of compromise, Planning Department Staff designed a plan for the applicant that addressed the landscaping and curbing requirements as well as meeting the parking needs for a business. The number of spaces required for the arcade was eighteen, and this number would not be available on the parcel. However, the applicant also owns the adjacent lot where there is room for several more parking spaces to make up for this deficit.



Left: This is the plan drawn by staff to show a possible landscaping buffer on the property.

This compromise plan shows three 2-inch caliper street trees (such as Live Oak, Willow Oak, Bald Cypress, etc.) spaced at 45' intervals with smaller ornamental trees (such as Crape Myrtles) in between, and ornamental shrubs in all the planting beds. An irrigation system, new curb and gutter and parking area are also required in this plan.

IV. FOUR-PART TEST

1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property.*

There are no extraordinary or exceptional conditions pertaining to this particular piece of property based on the following:

- The property is an existing building that is located in the Highway Design Corridor. It is similar to many other buildings located in the immediate area in that it was built and the site was developed prior to the current ordinance, and is therefore nonconforming as to parking lot improvements and landscaping. The building has been vacant for some time, and the applicant has been unsuccessful in finding a tenant because of the issue of updating the site to meet current ordinance standards. The surrounding buildings are a mixture of residences and businesses, some of which have recently been upgraded and meet ordinance standards, and others which will require upgrading at time of change of occupancy or application of a new business license.

Examples of adjacent buildings are as follows: The first pictures are of adjacent residences, and adjacent businesses that meet current ordinance standards:



2. *These conditions do not generally apply to other property in the vicinity.*

These conditions *do* generally apply to other properties in the vicinity based on the following:

- There are a variety of sizes and shapes of parcels in this area; however, all of the parcels in the area are governed by the same set of rules and circumstances as this parcel. The neighboring church, for example, recently completed an addition and has planted a landscape buffer that is attractive and well-maintained. This landscaping was required at the time the addition was built because the church, like this property, was in the Highway Corridor Protection District (HCPD).

3. *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

Application of the ordinance requirement ***will not*** prohibit or unreasonably restrict the utilization of this property due to the following:

- Parking and landscaping are a requirement of the ordinance and therefore must be complied with and is calculated according to the proposed use. Therefore, the

property is not unreasonably restricted from being used by the application of the ordinance requirements.

- 4. *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.***

Developing this property with the variances *will be* of substantial detriment to adjacent property or to the public good. The intent of the non-conforming use section of the zoning ordinance is to remove or eliminate non-nonconforming uses, structures, and sites. Simply, non-conforming sites should be redesigned or retrofitted as directed by the ordinance to meet the current standards of the ordinance.

If the property is developed in a non-conforming manner, it would result in the continuation and exacerbation of non-conforming sites in the Highway Corridor along North Main Street, which is a highly traveled thoroughfare and a main entrance into the City of Sumter. Allowing this property a variance could result in a detriment to other properties that have the same conditions as the present conditions on the parcel and would not be in the public interest because it would result in an unfair advantage over other sites which have been and are being developed in conformity with the ordinance. Consistent application of the ordinance is crucial.

V. STAFF RECOMMENDATION

Staff recommends denial of BOA-09-28 based on the fact that the requirements of the Four-Part Test are not met. It should be noted that approval of this variance would apply only to the site layout, and would not regulate improvements to be made to the structure itself. The variance also would not waive any sign permit regulations to be met by a potential business.

VI. DRAFT MOTIONS for BOA-09-26

- A. I move that the Sumter Board of Appeals deny BOA-09-28, subject to the findings of fact and conclusions contained in the draft order dated January 13, 2010 attached as Exhibit 1.
- B. I move that the Sumter Board of Appeals approve BOA-09-28 on the following findings of fact and conclusions:
- C. I move that the Sumter Board of Appeals accept the site plan drawn by staff as an alternative motion for BOA-09-28.

VII. ZONING BOARD OF APPEALS – JANUARY 13, 2010

This request was formally withdrawn by the applicant, Charles Hodge, at the meeting on January 13, 2010.

Exhibit 1
Order on Variance Application
Sumter Board of Appeals

BOA-09-28, 520 North Main Street, Sumter, SC.
January 13, 2010

Date Filed: January 13, 2010

Permit Case No. BOA-09-28

The Board of Zoning Appeals held a public hearing on Wednesday, January 13, 2010 to consider the request of Charles Hodge, 520 North Main Street, Sumter, SC 29150 for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant ☐ **has** - ☒ **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

There are no apparent extraordinary circumstances. This is in the Highway Corridor Protection District and is in a high visibility area and should meet the requirements as they exist.

2. The Board concludes that these conditions ☒ **do** - ☐ **do not** generally apply to other property in the vicinity based on the following findings of fact:

The conditions do apply to other properties in the vicinity based on a number of recent developments such as the landscaping upgrades of the Progressive Church of our Lord, adjacent to the property.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property ☐ **would** - ☒ **would not** effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

Application of the ordinance does not prohibit or unreasonably restrict the utilization of the property.

4. The Board concludes that authorization of the variance ☒ **will** - ☐ **will not** be of substantial detriment to adjacent property or to the public good, and the character of the district ☒ **will** - ☐ **will not** be harmed by the granting of the variance based on the following findings of fact:

Other properties must conform to the ordinance requirements.

THE BOARD, THEREFORE, ORDERS that the variance is ☒ **DENIED** – ☐ **GRANTED**,
subject to the following conditions:

The applicant will provide landscaping as required under the ordinance.

Approved by the Board by majority vote.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order was
mailed.**